UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,368	09/30/2003	Paul Mayer	F-322	5982

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EXAMINER
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ART UNIT	PAPER NUMBER
3628	

MAIL DATE	DELIVERY MODE
12/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/675,368	MAYER, PAUL
	Examiner	Art Unit	
	Nathan Erb	3628	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>19 November 2007</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ They raise the issue of new matter (see NOTE below);

   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

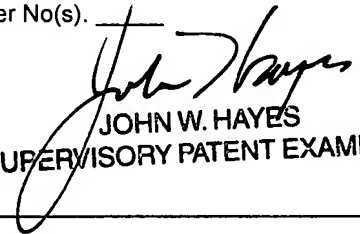   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following rejection(s): <u>See Continuation Sheet.</u>

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>1 and 3-5</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

JOHN W. HAYES
SUPERVISORY PATENT EXAMINER

Continuation of 5. Applicant's reply has overcome the following rejection(s): The rejections of claims 2 and 6 under 35 U.S.C. 103 have been overcome because those claims have been cancelled.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's amendment of the claim consists of incorporating the elements/limitations of claims 2 and 6 into claim 1. Therefore, the amended claim 1 would be rejected simply by incorporating the rejections of claims 2 and 6 from the previous Office action into the rejection for claim 1 from the previous Office action.

Applicant argues that the prior art rejections of the claims under 35 U.S.C. 103 are inappropriate because Gagliardi et al. does not disclose the claimed features whereby the networking features are directly embedded in the inserter controller computer. In support of this argument, and more specifically, applicant argues that Gagliardi et al. fails to disclose the element/limitation of "the controller computer further comprising a network port for directly transmitting status data processed by the network protocol object to an external network, and the network port and the network protocol object further configured for accepting incoming requests from the external network, the controller computer configured for transmitting inserter status data in real-time, without need for withdrawal of information from a database or repository in the controller computer." Examiner had used a combination of two references to disclose this element/limitation: Gagliardi et al. discloses "the controller computer further comprising a network port for directly transmitting status data using the network protocol to an external network," "the network port further configured for accepting incoming requests from the external network using the network protocol," and "the controller computer configured for transmitting inserter status data in real-time, without need for withdrawal of information from a database or repository in the controller computer," while Carroll et al. discloses "using objects to perform computer functions." Applicant first argues against that Examiner assertion by stating that Gagliardi et al. does not include any networking port or protocol that provides for transmittal of inserter status in real time and actually teaches away from such an arrangement. In support of this argument, applicant quotes Gagliardi et al., column 8, lines 20-31, which states: "After the inserter system 10 completes it's "mail run job", all the statistical data information (including the aforesaid postal information) relating to that "mail run job" remains stored in memory in the control system 14 of the inserter 10 (step 306). When a user of the OMS 100 desires to obtain statistical data information from a chosen postal meter on one of the inserter systems 10 coupled to the OMS 100 (FIG. 2), the user instructs the OMS 100 to send a signal to the control system 14 of the inserter system 10, via file server 102, having the chosen postage meter 104 or 106 to transmit that statistical data regarding the chosen postage meter 104 or 106 to the OMS 100 (step 308)." From that passage, applicant concludes that Gagliardi et al. describes a system where information is stored in memory, and the inserter must wait until an external query to provide the information.

The above-quoted passage certainly seems to support applicant's argument. However, the next paragraph of Gagliardi et al., column 8, lines 37-50, describes an alternative embodiment, by stating: "It is to be further appreciated that in addition to receiving postal data after an inserter system 10 has completed its "mail run job", the OMS 100 may be operated to send postal data to the OMS 100 on a real time basis. In other words, the ISC 14 sends postage meter 104,106 status information to the OMS 100 on a configured time interval. This allows the OMS 100 to obtain the latest register (e.g., ascending and descending) values of a postage meter 104,106, piece count information and etc., which information is sent to the OMS 100 on the occurrence of specific events (i.e., mail run job end and job pause). Thus, the OMS 100 may then be instructed to categorize this received postal data on predetermined parameters preferably determined by the user of the OMS 100." The above passage literally describes that information may be transmitted to the OMS of the user on a "real time basis." At first, this disclosure may seem unclear because the sentence following mention of the term "real time basis," clarifies what is meant by "real time basis" by stating that information is sent to the OMS of the user on a configured time interval. The term "real time basis" implies immediate or "live" transfer of information while transmitting information on a configured time interval implies the transfer of information in batches, between which there is a time delay. The apparent inconsistency can be explained by the fact that the term "real time basis" is somewhat of a misnomer. In general, the information transfers that are commonly described as in "real time" are not received by the recipient at exactly the same time as they are occurring -- there is a delay as the information travels through the atmosphere, cable, or other carrier medium. For example, telephone communication is typically considered in "real time" because there is typically no noticeable delay between a first party's statement and the other party's response to that statement, as might be expected if the transmission of information between the parties takes time. However, there IS such a delay in telephone communication, it is just not NOTICED because the delay is so short in duration. Likewise, the information of Gagliardi et al. can be transferred on a configured time interval so short in duration that it is not noticed and appears to be immediate. This must be what was intended by the language of Gagliardi et al. because, otherwise, the term "real time basis" would not have been used. Therefore, Gagliardi et al. does indeed disclose the transfer of information in real time, and applicant's arguments are not persuasive with respect to this issue.

Applicant further argues that applicant's application also satisfies a long-standing need for real time transfer of information. However, such an assertion does not negate that Gagliardi et al. previously disclosed a real time transfer of information, as discussed above. Therefore, applicant's arguments are not persuasive with respect to this issue.